Ontario

Final Compendium	Safeguarding and Sustaining Ontario's Water Act, 2007

Introduction:

If enacted, the Safeguarding and Sustaining Ontario's Water Act, 2007 ("SSOWA") would do the following:

i. Amend the *Ontario Water Resources Act* (OWRA) for the implementation of the Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement (Agreement) and make consequential changes to the *Safe Drinking Water Act, 2002*;

ii. Amend the OWRA to modernize and update the provisions in the Act that govern and regulate water takings;

iii. Amend the OWRA to provide for a regulation-making authority for a system of water conservation charges; and

iv. Repeal the *Water Transfer Control Act* which was never proclaimed and is no longer required as a result of the amendments being proposed to the OWRA.

Background:

If enacted, the SSOWA would allow for the implementation of the Agreement agreed to by the Premiers of Quebec and Ontario, and the Governors of the Great Lakes states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin on December 13, 2005. In 2001, Quebec and Ontario, and the eight Great Lakes states signed the Great Lakes Charter Annex, 2001 to negotiate agreements to protect and manage the Great Lakes- St Lawrence River Basin. After 4 years of negotiations, these jurisdictions agreed to manage, protect and conserve the waters of the Great Lakes – St. Lawrence River Basin through agreed principles as set out in the Great Lakes -St. Lawrence River Basin Sustainable Water Resources Agreement of 2005 ("the Agreement"), signed by all jurisdictions and an associated Compact, signed by the eight Great Lakes States. The Agreement provides a framework for all Parties to pass or modify laws, policies and programs that put into place new protections for Great Lakes - St. Lawrence River Basin waters. The Agreement sets out a phased approach to implementation of commitments for all signing parties. To implement the Agreement, each province and state agreed to pass or modify laws, policies and programs that put in place new protections for Great Lakes - St. Lawrence River Basin waters.

An important feature of the Agreement is its provision for a ban on the transfer of water out of the Great Lakes St Lawrence River Basin (Basin). Ontario has prohibited transfers of water out of the Great Lakes Basin since 1999. The Water Taking and Transfer Regulation made under the OWRA (O. Reg. 387/04, s.10) continues this ban. If enacted, the SSOWA would amend the OWRA and enshrine this ban in statute. Another important feature of the Agreement is the prohibition on new and increased

transfers of water between the five watersheds in the Basin. Intra basin transfers would only be permitted if strict criteria set out in the SSOWA are met. If enacted, the SSOWA would amend the OWRA and broaden the reach of the Permit to Take Water (PTTW) program so that it regulates not only persons who take water, but also persons involved in the transfer of water between the five Great Lakes watersheds.

Water takings in Ontario are governed by the OWRA and the Water Taking and Transfer Regulation (O. Reg. 387/04). Section 34 of the OWRA requires anyone taking more than (a total of) 50,000 litres of water on any day, with some exceptions, to obtain a Permit from a Director appointed by the Minister. If enacted, the SSOWA would amend section 34 of the OWRA to also provide a more modern foundation for the PTTW program and ensure that the Director has sufficient authority to ensure the provisions of the Agreement can be implemented. For instance, a second phase of the Agreement provides for a decision-making standard that must be applied to water withdrawals in the Basin. If enacted, the SSOWA would provide regulation-making authority to ensure that such a standard can be put in place, and that the Director is provided with the necessary powers to fully implement the standard. Another important aspect of the Agreement is conservation. If enacted, the SSOWA would amend the OWRA to provide both the Director through the PTTW program and the LGIC with the necessary authority to deal with water conservation measures. The new provisions would also assist in implementing the provisions of the Agreement by improving the management of waters in the Basin and increase knowledge and information in respect of their use.

Grandfathering in the PTTW program refers to a clause in section 34 of the OWRA that exempts takings established on or before March 29, 1961 from obtaining a PTTW. Currently, grandfathering only ceases to apply if the person taking the water increases the size of an intake pipe or installs a new intake pipe, deepens a well or constructs a new well, and/or changes a structure or works constructed for the diversion or storage of water. The SSOWA would introduce a regulation-making authority into the OWRA, authorizing a regulation to be made that may require currently grandfathered water takers to apply for and obtain a permit by a date specified in the regulation. Such a regulation may be general or particular in its application; for instance, it may require only a specific class of grandfathered water takers to obtain a permit by a specified date.

If enacted, the SSOWA would also introduce a new regulation-making authority to allow for the development and implementation of a system of water conservation charges. The charges could be imposed on a prescribed class of persons who take or use water. The purposes of the charge are for promoting the conservation, protection and management of Ontario's waters and their efficient and sustainable use, or to recover costs the Government of Ontario incurs for that purpose. The regulations would set out rules governing the methods for how charges are determined, how the charges are to be paid, the consequences for failure to pay a charge, and other matters that are necessary for the administration of a system of charges.

The SSOWA proposes the following preamble:

Preamble

The conservation, protection and management of Ontario's waters and their efficient and sustainable use are matters of vital importance to the people of Ontario. The people of other jurisdictions that depend on the waters of the Great Lakes-St. Lawrence River Basin share similar concerns. With this in mind, the Premiers of Ontario and Quebec and the Governors of Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania and Wisconsin signed the Great Lakes-St. Lawrence River Basin Sustainable Water Resources Agreement in December 2005. The Agreement recognizes, among other matters, that,

a) the waters of the Basin are a shared public treasure and the parties to the Agreement as stewards have a shared duty to protect, conserve and manage these renewable but finite waters;

b) managing to conserve and restore these waters will improve them as well as the water dependent natural resources of the Basin; and

c) continued sustainable, accessible and adequate water supplies for the people and economy of the Basin are of vital importance.

In addition, the conservation, protection and management of water and the efficient and sustainable use of water would be promoted by the imposition of regulatory charges

Below is a description of each section of the SSOWA. In the text below:

- A bolded section or subsection reference is to a provision of the SSOWA.
- A reference to a provision that is not bolded, such as those found in brackets, is a reference to provisions of the statute as it would read if the SSOWA is enacted.

Proposed Amendments to the *Ontario Water Resources Act*

Subsection 1 (1)

Currently, there is no purpose clause in the OWRA. If enacted, subsection 1 (1) of the SSOWA would add a purpose clause to the OWRA, indicating that the purpose of the OWRA is to provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being. This purpose is consistent with the purpose of the Agreement. It should also be noted that this purpose statement is very similar to the current purpose provision of the Water Taking and Transfer Regulation (O. Reg. 387/04, section 1).

Subsections 1 (2), (11)

If enacted, subsection 1 (2) of the SSOWA would add the following definitions to the OWRA: "Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement" and "holder". The definition of "well" would be added to section 1(1) to apply to the entire Act. Subsection 1 (11) would repeal the definition of "well" from section 35 of the OWRA, where it is only applied to specific provisions of the OWRA.

Subsections 1 (3), (12)

If enacted, subsection 1 (3) of the SSOWA would add two interpretive provisions to the OWRA. The first would explain that, if water is taken from one of the three basins in Ontario, the portion of water that is not returned to the basin as a result of evaporation, incorporation in a product or any other process, is lost through "consumptive use". The second would clarify the means of water takings that are governed the OWRA, and subsection 1 (12) would add a regulation-making authority to the Act to allow a regulation to clarify whether an activity is or is not a water taking governed by the Act.

Subsections 1 (4) and (5)

If enacted, subsections 1 (4) and (5) of the SSOWA would repeal subsections 13 (8) to (11) of the OWRA and add section 13.1. Under the existing subsections 13 (8) to (11) of the Act, the Ministry is required to keep an index of instruments issued under the Act. These subsections also require that, upon the request of a person, the Ministry must search the index for the name of a person to determine if an instrument has been directed to that person, and if one appears, to allow the person to inspect a copy of the instrument. Section 13.1 would continue these provisions but clarify that these provisions also apply to permits and licences issued under the Act.

Subsection 1 (6)

If enacted, subsections 1(6) of the SSOWA would repeal section 34 of the OWRA and replace it with sections 34 and 34.1 of the Act. The new section 34 would continue the existing requirement that a person shall not take more than 50,000 litres of water on any day, unless a permit has been granted by the Director for the taking. To support commitments in the Agreement, subsection 1 (6) would amend the existing exemption for watering of livestock and for domestic use that is currently in the OWRA.

Under the existing section 34, a permit is not required for a water taking for a domestic purpose so long as the water taking is not by a municipality or a company public utility. The new exemption for domestic use is very similar, and applies for a taking of water for domestic purposes, other than by a municipal drinking water system within the meaning of the Safe Drinking Water Act, 2002, or by a company public utility, as long as the taking is always less than 379,000 litres/day, or such lower amount as may be prescribed by regulation. (see proposed paragraph 1 of subsection 34 (2))

Under the existing OWRA, a permit is not required for a water taking to water livestock so long as the water is not taken into storage. This exemption would be replaced with a new exemption that would exempt water takings for watering livestock (where the water is not taken into storage), so long as the water taking is always less than 379,000 litres/day. Unlike the domestic use exemption, there would be no authority to lower this amount by regulation. (see proposed paragraph 2 of subsection 34 (2))

For both the domestic and water livestock exemptions, a regulation-making authority would be added to permit for the averaging of the 379,000 litres/day amount over a period of days to be specified in the regulation.

Water takings for firefighting or other emergency purposes would also be exempt from the requirement to obtain a permit (see proposed paragraph 3 of subsection 34 (2)). Currently section 34 only exempts firefighting.

Currently, under section 34 of the OWRA, water takings that commenced on or before March 29, 1961 are not required to obtain a Permit to Take Water. The proposed amendments to the OWRA would provide the Lieutenant Governor in Council (LGIC) with authority to make a regulation to require such historical water takings to obtain a PTTW. Historical water takings would not be required to obtain a permit unless the LGIC exercises this proposed regulation-making authority. Such a regulation may be general or particular in its application, for instance it may require only a specific class of grandfathered water takers to obtain a permit by a specified date. Historical water takers would be deemed to be in compliance so long as they applied for a permit by the date specified in the regulation (see proposed subsections 34 (3) and (4) and existing section 77 of the Act)

The current section 34 only sets out very basic provisions in relation to the Director's authority to regulate water takings. For instance, the current section 34 does not in any way deal with applications for permits or the types of terms and conditions that may be imposed in a permit. To ensure a clear and consistent approach in implementing the Agreement, including the provisions of the Agreement concerning the decision-making standard that would apply to water withdrawals from the Great Lakes St Lawrence River Basin, subsection 1 (6) of the SSOWA proposes to replace these provisions by adding section 34.1 to the OWRA. This section will improve the effectiveness of the PTTW program and will clarify and update existing statutory authorities in relation to the PTTW program.

Accordingly, Section 34.1 would modernize the PTTW provisions in the OWRA in the following ways:

- Clarify the Director's authority to issue, amend, renew or revoke a permit. (see proposed subsections 34 (1), (2))
- Clarify the Director's authority to require an application in a manner and form approved by the Director, including conducting tests such as a pumping test (see proposed subsections 34 (4) and (5)) .

- Provide that if a PTTW expires and a person applies for a renewal of the PTTW 90 days before the expiry of an existing PTTW (or other time specified by the Director), the PTTW that has expired would be allowed to continue until the Director makes a determination on the application. The PTTW would only be allowed to continue for a period of up to one year, after which time the PTTW would expire if the Director does not renew within that period. (see proposed subsection 34 (6))
- Clarify the authority of the Director to impose terms and conditions in a permit as the Director considers necessary for the purposes of the OWRA (see subsections 34 (8) to (10)), including:
  - limiting the amount of water taken;
  - limiting the rate at which water may be taken;
  - governing the manner in which water may be taken;
  - governing the return, after use, of water taken, including governing the manner in which water may be returned; governing the quantity of water that may be returned; governing the quality of water returned; and governing the location or area to which water may be returned, including restricting the amount of water that may be returned to a location or area that is different from the location or area from which it was taken;
  - governing the monitoring and reporting of the amount of water taken under the permit, including amounts of water that are returned; the rate at which water is taken; the use of water taken, and the effects of water takings, including their effects on water quantity and quality;
  - governing the keeping of records with respect to monitoring and reporting;
  - requiring reports to be made to the Director, to other persons or both;
  - governing the use and conservation of water taken, including measures to promote the efficient use of the water and reduce the consumptive use of the water;
  - requiring the holder to restrict the amount of water taken, in the circumstances specified in the permit;
  - requiring the permit holder to implement specified measures to prevent the water taking from causing interference with other water takings, and to remedy any interference with other water takings that is caused by the water taking; and
  - requiring the permit holder to use specified laboratories or testing methods.
- Provide that a PTTW cannot be transferred to another person without the written consent of the Director (see proposed subsection 34 (11)).

Subsection 1 (7)

If enacted, subsections 1 (7) of the SSOWA would add additional subsections to section 34.1 for the purpose of requiring the Minister to decide certain PTTW applications if they involve large new or increased transfers of water between two Great Lakes watersheds. If an application is made to the Director for a large water transfer (greater than 19 million litres/day consumptive use or less if prescribed by regulation) from the watershed of one Great Lake to another, the Director is required to refer the application to the Minister. Subsection 34.1(14) also sets out the applicable procedure for Minister's decisions including the provision of notice to the Regional Body and the allowance for adequate time for the Regional Body to review and issue a declaration of

finding on the proposal. The Regional Body is a body that represents all parties to the Agreement and ensures that matters of Regional significance are considered by them.

Subsection 1 (8)

Subsection 1 (8) would also add a new provincial officer order power to the OWRA (see proposed section 34.2), allowing an officer to issue an order to any person who is taking water to monitor and report to the provincial officer on the amount of water the person is taking, if the means used has a capacity to take water that exceeds 50,000 litres per day. As with other provincial officer orders under the OWRA, the person to whom an order is issued may seek a Director's review of the order and a further appeal of the Director's decision on review to the Environmental Review Tribunal (see proposed subsection 34.2 (4)).

Subsection 1 (8) would also add a new section to the OWRA to ban the transfer of water between the three water basins in Ontario (see section 34.3). Section 10 of O. Reg. 387/04 made under the OWRA, bans inter-basin diversions out of Ontario's three water basins (transfers of water out of Ontario's three water basins - Great Lakes - St. Lawrence River Basin, Nelson Basin, and Hudson Bay Basin). This section continues a ban on transfers that has been in place in Ontario since 1999. The proposed amendments to the OWRA would place that prohibition in legislation. Ontario's inter-basin prohibition is stricter than the Agreement's prohibition on transfers out of the Great Lakes - St. Lawrence River Basin.

The existing exceptions to the prohibition in O. Reg. 387/04 for inter-basin transfers would continue, such as:

- Historical inter-basin transfers which commenced prior to January 1, 1998, provided that the amount of water transferred out of a water basin does not exceed the highest amount of water transferred out of the water basin by the undertaking in any year after December 31, 1960 and before January 1, 1998;
- Water taken pursuant to the order of the Lieutenant Governor in Council dated October 12, 1913 respecting the Greater Winnipeg Water District;
- Water in containers of 20 litres or less;
- Water necessary for the operation of a vehicle or vessel in which the water is being transported, including water that is for the use of the people, livestock or poultry in the vehicle or vessel; and
- Water incorporated in products, such as beer or canned fruit.

In addition, there would be a new exception to the inter-basin prohibition for firefighting purposes and other emergency purposes to be consistent with the existing exception in the OWRA from the requirement for a permit. Finally, the OWRA would expressly prohibit the Director from issuing, amending or renewing any permit if the water to be taken under the permit is to be transferred out a water basin unless it meets limited exceptions (see proposed subsection 34.3 (4)).

Subsection 1 (8) would also add a new section to the OWRA to recognize the Agreement and the Agreement's recognition of the Precautionary Principle (see

proposed section 34.4). This section would recognize that the Great Lakes - St. Lawrence River Basin Sustainable Water Resource Agreement of 2005 is one of the means by which the waters of the Great Lakes - St. Lawrence River Basin are conserved, protected and managed. The agreement recognizes that, where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

Subsection 1 (9)

If enacted, subsection 1 (9) of the SSOWA would make a technical amendment to the proposed subsection 34.3 (4) to ensure that it refers to the appropriate provisions when the proposed section 34.1 comes into force. The reason for the technical amendment is because the proposed section 34.3 (ban on interbasin transfers) comes into force on Royal Assent, whereas the proposed section 34.1 comes into force on a later date by proclamation.

Subsection 1 (10)

If enacted, subsections 1 (10) of the SSOWA would add several new sections to the OWRA (see proposed sections 34.5 to 34.11). The purposes of the proposed new sections are to implement two features of the Agreement. First, the amendments would authorize the PTTW program to regulate new and increased transfers of water between the five watersheds in the Great Lakes St Lawrence River Basin (see description of the proposed sections 34.5 and 34.8 below). Second, the amendment would give the other parties to the Agreement access to the Environmental Review Tribunal and Divisional Court to challenge certain types of decisions that relate to water takings and transfers (see the description of the proposed sections 34.9 to 34.11 below). The Agreement provided that each Party ensure that their laws provide the other Parties to the Agreement with standing to challenge certain matters before a court or tribunal.

Subsection 1 (10) would add a new section to the OWRA (see proposed section 34.5) that would divide the Great Lakes – St. Lawrence Basin into the following five watersheds, each of which would be delineated in regulation.

1. The Lake Superior watershed
2. The Lake Huron watershed
3. The Lake Erie watershed
4. The Lake Ontario watershed
5. The St. Lawrence River watershed

Definitions

Subsection 34.5 (1) would also propose the following definitions for the purposes of this section and section 34.6 to 34.8:

"Threshold amount" would be defined to mean 379,000 litres or more on any day or, if a regulation is made prescribing the manner of calculating average amounts of water, an average of 379,000 litres or more per day.

- The "effective date" would be defined to mean the date this section comes into force.
- "Transfer" would be defined to mean a transfer of water from one Great Lake watershed to another.

As the Agreement applies to new and increased transfers of water between the Great Lake watersheds, section 34.5 would also add the following definitions: "

- "New transfer" would be defined as a transfer that would arise from a new water taking, or an existing water taking where no water is currently being transferred;
- "Increased transfer" would mean a transfer that would arise from an existing water taking where water is currently being transferred and an additional amount of water would be transferred.
- "New or increased transfer amount" would mean,
  - in the case of a new transfer, the amount of water that would be transferred, and,
  - in the case of an increased transfer, the additional amount of water that would be transferred.

Section 34.5 would also authorize the PTTW program to regulate persons who are involved in the transfer of water between Great Lakes watersheds. For this purpose the following definition would also be added by the section:

- "related transferors" would be defined as persons who do not take water under a permit, but transfer the water taken under the permit or persons who distribute transferred water.

Prohibiting the authorization of new or increased transfers

Subsection 34.6 would prohibit a permit from authorizing a new or increased transfer of water in the amount of 379,000 litres per day or greater (the "threshold amount") from one Great Lake watershed to another Great Lake watershed. Subsection 34.6 (2) would sets out three limited exceptions to this prohibition – these exceptions are reflected in the Agreement.

1) *New or increased transfers where the water is returned to the source watershed*

   Paragraph 1 of subsection 34.6 (2) provides an exemption for an application to establish a new transfer of water or to increase an existing transfer of water by the threshold amount if the application is made for a municipal residential drinking water system and the water that is lost through consumptive use is less than 19 million L/day or a lower amount that is prescribed by the regulations. Paragraph 1 implements the Straddling Community exception in the Agreement and makes this exception applicable to Ontario municipalities. Ontario is not divided up into incorporated towns or cities, but into upper, lower and single tier municipalities, which makes the determination of whether a municipality straddles two watersheds very difficult. This exception encourages all municipalities to return flow for their drinking water facilities, which is consistent with the Agreement. To take the benefit of this exemption, the applicant must demonstrate that the proposed new or increased transfer satisfies all the criteria set out in subsection 34.6 (3). This would include the requirement that the

transferred water be returned to the source Great Lakes watershed, less an allowance for consumptive use.

2) *New or increased transfers where the water is <u>not</u> returned the source watershed*

Paragraph 2 of subsection 34.6 (2) provides an exemption for an application to establish a new transfer of water or to increase an existing transfer of water by the threshold amount if the application is made for a municipal residential drinking water system or for any other purpose and the water that is lost through consumptive use is less than 19 million L/day or a lower amount that is prescribed by the regulations. To take the benefit of this exemption, the applicant must demonstrate that the proposed new or increased transfer satisfies all the criteria set out in subsection 34.6 (3) except that the water transferred (less the consumptive use) may be returned to another Great Lakes watershed rather than the source watershed provided that the return of water to the source Great Lakes watershed is not feasible, environmentally sound or cost effective. Additionally, the applicant must demonstrate that there is no feasible, cost effective, environmentally sound alternative within the Great Lakes watershed to which the water will be transferred, including conservation of existing water supplies. Ontario must also provide notice to the other Parties to the Agreement prior to the Director making any decision with respect to the proposal.

3) *Large New or Increased Transfers That Require A Review by the Regional Body*

Paragraph 3 of subsection 34.6 (2) provides an exemption for an application to establish a new transfer of water or to increase an existing transfer of water by the threshold amount where the portion of the transfer that is lost through consumptive use is at least 19 million L/day or such lower amount as may be prescribed by the regulations. The proposed section 34.1 would require the Director to refer such applications to the Minister (see proposed subsections 34.1 (12) to (14)). To take the benefit of this exemption, the applicant must demonstrate that the proposed new or increased transfer satisfies all the criteria set out in subsection 34.6 (3). This would include the requirement that the transferred water be returned to the source Great Lakes watershed, less an allowance for consumptive use. Additionally, the applicant must demonstrate that there is no feasible, cost effective, environmentally sound alternative within the Great Lakes watershed to which the water will be transferred, including conservation of existing water supplies. Before the Minister makes a decision on the application, the proposal must undergo Regional Review by the Regional Body and the Minister must consider any declaration of finding made by the Regional Body following a Regional Review when deciding the application.

The Exception Standard

Subsection 34.6 (3) would enshrine in the OWRA the Exception Standard, set out in Article 201 of the Agreement. The Exception Standard sets out seven criteria that must

be met by PTTW applicants for proposals for new transfers or increased transfers in the amount of 379,000 litres per day or greater (the "threshold amount"):

- All water transferred must be returned to the Source Watershed (less an allowance for consumptive use);
- Need for the water cannot be avoided through water conservation and efficiency;
- Amount of water is limited to reasonable quantities;
- There must be no significant adverse impact to water quantity or quality;
- The proposal must incorporate water conservation and efficiency measures;
- Must ensure compliance with applicable laws including inter-provincial and international agreements including the Boundary Waters Treaty of 1909; and
- Additional criterion may be added by regulation to implement the findings of the cumulative impact assessment provided under article 209 of the Agreement including criteria related to climate change or other significant threats to the Great Lakes - St. Lawrence River Basin.

Additional Restrictions and Powers to Regulate New or Increased Transfers

Subsection 34.7 (1) would impose the following terms and conditions on every permit that authorizes the taking of water from a Great Lakes watershed where the water is to be transferred to another watershed, whether the condition is specified in the permit or not:

- The person who takes water and any related transferor shall not cause or permit a new transfer or an increased transfer where the amount of water transferred, or the increase in the amount of water transferred is the threshold amount unless the holder first obtains a new permit or an amendment under section 34.1 to authorize the new or increased transfer.
- Each holder (which includes a related transferor) must also comply with any other terms and conditions that are prescribed by regulation and are directed to the holder.

Subsection 34.7 (2) would also authorize a Director to include terms and conditions in a permit that regulate the transfer of water between Great Lakes watersheds. These terms and conditions are similar to the types of terms and conditions that would be authorized to be included in a permit under section 34.1, except that these terms and conditions are specific to the water being transferred (as opposed to the water that is taken under the permit). Subsection 34.7 (3) would authorize a Director to impose any term or condition in a permit to a "related transferor" – those persons who are not the person taking the water under the permit but who are involved in the transfer of water. If a related transferor is regulated under a permit, subsection 34.7 (4) would authorize a related transferor to make applications in relation to the permit.

Subsections 34.7 (5) and (6) would impose a restriction on grandfathered historic water takings that do not under the existing section 34 of the OWRA require a permit to take water. (A description of these takings is set out in the description of the proposed new section 34, as amended by subsection 2 (6).) A person who takes water by such means would be prohibited from transferring 379,000 litres per day or more from one

Great Lake watershed to another (either as a new transfer, or as an increased amount to an existing transfer) without first obtaining a permit authorizing the transfer.

Subsection 34.7(7) would set out the following exceptions to the provisions being introduced that prohibit new or increased transfers: (These are the same as four of the six the exceptions to the ban on transfers out of a water basin – see proposed subsection 34.3 (3).)

A transfer of water that is in a container having a volume of 20 litres or less. A transfer of water that occurs when a product other than water is manufactured or produced in a Great Lakes watershed, using water from that Great Lakes watershed, and the product is then transferred out of that Great Lakes watershed.

A transfer of water that is necessary for the operation of a vehicle, vessel or other form of transport that the water is transferred in, including water that is for the use of people, livestock or poultry in or on the vehicle, vessel or other form of transport.

A transfer of water for the purpose of fire fighting and other emergency purposes.

Other Approvals That Relate to the Proposed New or Increased Transfer

If a person has applied for a new or increased transfer, and it has been authorized under a permit, subsections 34.7 (8) and (9) would give the Director additional authority to amend other types of approvals that may be relevant to the proposed new or increased transfer. The Director is given the authority to amend a sewage works approval that relates to a works that returns the transferred water, or a type of approval under Part V of the *Safe Drinking Water Act, 2002,* that relates to a drinking water system that transfers water between Great Lakes watersheds, or any other instrument that may be prescribed by regulation. The purpose of the amendment must be to make such instruments consistent with terms and conditions in the permit or to ensure that the transfer satisfies one or more of the criteria specified in subsections 34.6 (2) or (3). Subsection 34.7 (10) provides that if there is a conflict between a term or condition in these other approvals and a term or condition in the permit that regulates a transfer, the term or condition that provides the greatest protection to the quality or quantity of water prevails.

Establishing the baseline amounts of water being transferred for existing water takings

Where a person is the holder of a permit for an existing water taking, subsection 34.8 would give the Director the authority to determine, in accordance with the regulations, the amount of water the person is deemed to be currently transferring for the purpose of the proposed sections 34.5 and 34.7. The purpose of this authority is so that a holder of a permit can be advised of the amount of water that can be transferred under the permit, so that it is not considered an increased transfer of water under the OWRA, and therefore, subject to the prohibition and strict exception criteria noted above. Subsection 34.8 (2) explains that section 34.8 is a transitional provision that would only apply if a

request is made by the holder within two years after this section comes into force. 34.8(3) directs a holder to provide information to the Director so that the Director can make the necessary determination. Subsection 1 (14) would amend section 75 of the OWRA to add the necessary regulation-making authority to prescribe rules for the Director's determinations. The proposed clause 75 (1.5) (n) would authorize regulations that prescribe the circumstances in which the Director is required or authorized to deem a holder to currently be transferring an amount of water, and to prescribe methods of determining such amounts including methods that take into account paragraph 1 of Article 207 (Applicability) of the Agreement. This provision of the Agreement provides guidance on the types of transfers that are grandfathered by the Agreement.

Giving other Parties to the Agreement Standing to Challenge Certain Decisions In Relation to Water Takings and Transfers

Section 34.9 would authorize a regulation to be made to prescribe a reciprocating jurisdiction. Generally, under the Agreement, Parties agree to provide each other with substantially equivalent access to their courts or tribunals to challenge certain decisions in relation to water takings and transfers. The intent is that once a Party to the Agreement has provided such access to Ontario, a regulation would be made to prescribe that jurisdiction as a reciprocating jurisdiction.

Section 34.10 would require the Director to give notice of a decision if the decision authorizes a new or increased taking of water and subsection 34.6 (3) had to be applied to the decision (the Exception Standard) or the decision is a type of decision specified in regulations where a decision-making standard governing water takings from a Great Lakes watershed had to be applied. Once the reciprocating jurisdiction receives notice, it is entitled by notice to require a hearing before the Environmental Review Tribunal. Generally, the provisions in the OWRA governing appeals would apply.

Section 34.11 provides a reciprocating jurisdiction with the right to bring an application for judicial review of a decision in the following three instances:

- the decision authorizes a new or increased taking of water and subsection 34.6 (3) had to be applied to the decision (the Exception Standard);
- the decision is a type of decision specified in regulations where a decision-making standard governing water takings from a Great Lakes watershed had to be applied; or
- the decision allegedly authorizes the transfer of water out of the Great Lakes – St. Lawrence River Basin.

Subsection 1 (11)

If enacted, subsection 1 (11) of the SSOWA would repeal the definition of well in section 35 of the OWRA. Subsection 1 (2) of the Bill proposes to place the definition of "well" in section 1 of the OWRA so that it applies to the entire Act.

Subsection 1(12)

Technical French translation clarification in subsection 53(1) of the OWRA

Subsection 1 (13)

If enacted, subsection 1 (13) of the SSOWA would add authority for the Lieutenant Governor in Council to make regulations in relation to the provisions that are to come into force on Royal Assent. These include the authority to make a regulation to require persons who take or use water, including those not required to obtain a permit, to monitor and report to the Director.

Subsection 1 (14)

If enacted, subsection 1 (14) of the SSOWA would add regulation-making authority to the OWRA in relation to the proposed new sections 34 to 34.4. For instance, the regulation-making authority to require historic grandfathered water takers to obtain a permit is mentioned.

Subsection 1 (15)

If enacted, subsection 1 (15) of the SSOWA would add regulation-making authority to the OWRA in relation to sections 34.5 to 34.11. Some of the key regulation-making authorities are as follows:

- Regulations that would implement Articles 203, 205 and 209 of the Agreement. For instance, Article 203 provides that a decision-making standard be developed and applied to water takings from the Great Lakes Basin. This regulation-making authority would allow this standard to be enshrined in regulation and then applied to decisions of the permit to take water Director.
- Regulations that would specify how quantities of water shall be determined for the purpose of sections 34 to 34.11. This includes the authority to prescribe rules specifying how a series of applications for new or increased transfers are treated or a series of permits that authorize new or increased transfers to the same watershed, so as to ensure that the restrictions on new or increased transfers are not being circumvented. A similar authority is provided to ensure the consistent application of Article 203.
- Regulations that would prescribe the circumstances in which the Director is required or authorized to deem a holder to currently be transferring an amount of water for the purpose of subsection 34.8 (1), and to prescribe methods of determining such amounts including methods that take into account paragraph 1 of Article 207 (Applicability) of the Agreement. This provision of the Agreement provides guidance on the types of transfers that are grandfathered by the Agreement.

Subsection 1 (16)

If enacted, subsection 1 (16) of the SSOWA would authorize regulations to be made under the OWRA establishing and governing charges to promote the conservation, protection and management of Ontario's waters and their efficient and sustainable use, or to recover costs the Government of Ontario incurs for that purpose in the administration of this or any other Act. A regulation made under this proposed authority will not require a person to pay a charge unless, the person uses the water for commercial or industrial purposes; or the person takes the water, a permit is required under section 34 to take the water, and another person uses the water for commercial or industrial purposes. This proposed authority is broad in scope, allowing flexibility in developing the water conservation charges, and includes,

- Prescribing who would be required to pay the water conservation charges;
- Prescribing the methods for determining the amount of the water conservation charges (including charging by permitted or actual volume withdrawn, setting rates, charging different rates for different users);
- Prescribe when the water conservation charges are to be paid;
- Governing the refund of water conservation charges; and,
- Providing for consequences for the failure to pay a charge, including requiring the payment of interest, late payment penalties and the suspensions of or refusal to issue a permit until the charge is paid.

Subsections 1 (17) to (21)

If enacted, subsections 1 (17) to (21) of the SSOWA would add some additional regulation making authority to the OWRA and amend some of the existing regulation making authorities. Some examples include:

- Clarifying the existing regulation making authority in relation to the use of water from any source of supply so that it expressly allows for the regulations of takings and transfers from such sources.
- Adding a regulation-making authority to regulate the transfer of sewage between Great Lakes watersheds.
- Adding a regulation-making authority to require conservation measures.
- Clarifying existing regulation-making authority over permits, licences and approvals under the Act so that the regulation can expressly deal with applications and the inclusion of terms and conditions.

Regulations clarifying the terminology used in 34.6 (2) and (3) for the purpose of defining words and expressions used in those subsections (intra-basin transfers).

Subsection 1 (22) to (32)

If enacted, subsections 1 (22) to (32) of the SSOWA would amend provisions in the Act that govern appeals to the Environmental Review Tribunal. First, it would clarify clause 100 (3) (a) of the OWRA to ensure there is a right of appeal where an approval is revoked. Second, the right to appeal a notice issued by the Director is being removed.

Under the OWRA, where the Director orders a person to do something, that order may be imposed in a document called an order, a direction, a report or a notice. However only section 34 contains the authority for the Director to require a person to do something by notice – in every other case the authority is carried out by an order, direction or report issued under the Act. If the new sections 34 and 34.1 are enacted replacing the existing section 34, the reference to "notice" in the appeal provision would no longer be necessary.

Proposed Amendments to the Safe Drinking Water Act, 2002

Section 2

Under the *Safe Drinking Water Act, 2002* a licence for a municipal drinking water system cannot be issued by the Director unless a permit to take water has been issued for the system. This requirement only applies if the licence relates to a part of the drinking water system that takes water from a raw water supply. It would not apply, for instance, if the licence were for a system that was entirely a connected system, meaning it obtained all of its water from another drinking water system. If enacted, section 2 of the SSOWA would amend various provisions in the SDWA, so that if a connected drinking water system is involved in the transfer of water between Great Lakes watersheds, a licence could only be issued if a permit to take water had been issued and the permit regulates the transfer. An additional amendment is made so that if a licence, permit or approval under the SDWA is amended as a result of a decision to authorize a new or increased transfer under section 34.6(2) of the OWRA, the decisions may be appealed to the ERT.

Water Transfer Control Act

Section 3

If enacted, section 3 of the SSOWA would repeal the *Water Transfer Control Act*. The Act has never been proclaimed into force.

Commencement

Section 4

Section 4 provides for when the provisions of the SSOWA are to come into force. Generally, commencement works as follows:

- The amendments to the OWRA to add a purpose provision, add definitions and interpretive sections, and clarify provisions relating to the index would come into force on Royal Assent.
- The amendments to the OWRA which add a provincial officer order power, enshrine the ban against transfers out of a basin and recognize the Agreement would come into force on Royal Assent.

- Certain amendments to the OWRA to clarify existing regulation-making authority would come into force on Royal Assent.
- The repeal of the *Water Transfer Control Act* comes into force on Royal Assent.

All other provisions of the SSOWA would come into force on proclamation. These include, the amendments to the OWRA which add new provisions for the PTTW program including when a permit is required, provisions governing new and increased transfers between Great Lakes watersheds, provisions which give reciprocating jurisdictions rights to challenge certain decisions, related regulation-making authority and amendments to the *Safe Drinking Water Act, 2002*.

Short title

Section 5

Section 5 sets out the short title of the *Safeguarding and Sustaining Ontario's Water Act, 2007*